

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
October 24, 2006 Session

STATE OF TENNESSEE v. WALTER EDWARD YOUNG

Appeal from the Circuit Court for Montgomery County
No. 40000375 John H. Gasaway, III, Judge

No. M2006-00137-CCA-R3-CD - Filed November 20, 2006

This matter is before the Court upon the Defendant's appeal from an order of the trial court denying the Defendant's motion to withdraw his guilty plea. The State argues that the appeal should be dismissed because the Defendant, Walter Edward Young, did not timely file his notice of appeal. We agree that the notice of appeal was not timely filed. We also conclude that the interest of justice does not require that the timely filing of the notice of appeal be waived. Accordingly, this appeal is dismissed.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

DAVID H. WELLES, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and J.C. McLIN, JJ., joined.

Sara Willingham, Clarksville, Tennessee, for the appellant, Walter Edward Young.

Paul G. Summers, Attorney General and Reporter; Brian Clay Johnson, Assistant Attorney General; John Carney, District Attorney General; and Arthur Bieber, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

This appeal has not proceeded in a straightforward manner. We will attempt to set forth the procedural background for this appeal, which we glean primarily from documents found in the technical record.

PROCEDURAL BACKGROUND

On November 1, 2001, the Defendant entered a “best interest” or Alford¹ plea of guilty to facilitation of rape, a Class C felony. Pursuant to a plea agreement, he was sentenced as a multiple offender to serve ten years in the Department of Correction. On November 19, 2001, the Defendant filed his first motion to withdraw his guilty plea. Although the record on appeal does not contain a copy of an order denying this motion, the Defendant’s brief states that the motion was denied. The brief also states that the denial of the motion was appealed to this Court, but that the appeal was dismissed for failure to file a brief. The records of this Court reflect that an order dismissing the Defendant’s appeal was filed on July 17, 2002.

On July 17, 2003, the Defendant again filed a motion to withdraw his guilty plea. On August 12, 2003, this motion was denied as being untimely filed. An additional motion to withdraw the guilty plea was filed on August 21, 2003, which was summarily denied by the trial court on September 4, 2003.

On September 22, 2003, and again on October 24, 2003, the Defendant filed additional motions to withdraw his guilty plea. An attorney was appointed to represent the Defendant on December 11, 2003. The trial court conducted an evidentiary hearing, apparently on the two most recent motions, on April 29, 2004. At the conclusion of the evidentiary hearing, the trial court found that the Defendant voluntarily and knowingly entered his guilty plea. The trial court stated that the motion to withdraw the guilty plea was denied. An order denying the motions is not contained in the record on appeal.

Thereafter, on July 25, 2005, the Defendant filed a motion to set aside his plea agreement. On January 12, 2006, the Defendant, acting through counsel, filed a notice of appeal from the trial court’s “December 13, 2005 denial of his motion to set aside his guilty plea.” The Defendant also filed a motion to have his appointed counsel removed. This motion was apparently granted, and a new attorney was appointed on January 12, 2006. This attorney was allowed to withdraw on January 26, 2006. A subsequent attorney was appointed on January 31, 2006. Apparently this attorney was also allowed to withdraw. Present counsel was appointed on March 14, 2006.

In his appellate brief, the Defendant states that his “post-conviction relief hearing” was held on April 29, 2004. At the conclusion of that hearing, the trial court denied the Defendant’s motion to withdraw his guilty plea. The Defendant acknowledges that he did not file a notice of appeal within thirty days of the trial court’s judgment denying him relief. His notice of appeal was not filed until January 12, 2006, after “another pro se motion to withdraw his guilty plea was denied on December 3, 2005.”

¹ Provided there is a factual basis for entry of the guilty plea, a defendant may enter a guilty plea and maintain his innocence if the defendant determines that the guilty plea is in his best interest. See North Carolina v. Alford, 400 U.S. 25 (1970).

ANALYSIS

The judgment of conviction in this case was filed on November 1, 2001. That judgment became final, at the latest, on July 17, 2002, when this Court dismissed the Defendant's appeal from the denial of his first motion to withdraw his guilty plea.

Before sentencing, a trial court may grant a motion to withdraw a guilty plea for any fair and just reason. Tenn. R. Crim. P. 32(f). After the sentence has been imposed, but before the judgment has become final, a trial court may set aside a judgment of conviction and permit the withdrawal of a guilty plea "to correct manifest injustice." Tenn. R. Crim. P. 32(f). The Rules of Criminal Procedure do not authorize the trial court to allow a guilty plea to be withdrawn after the judgment of conviction has become final.

Motions to withdraw the Defendant's guilty plea were filed on September 22, 2003, and again on October 24, 2003. A hearing was conducted on these motions on April 29, 2004. It is apparent that the judgment of conviction had become final long before these motions were filed. The trial court did not err by overruling the Defendant's motion to be allowed to withdraw his guilty plea.

We also note that, if treated as petitions for post-conviction relief, the motions to withdraw the guilty plea were not timely filed. A petition for post-conviction relief must be filed within one year of the date of the final action of the highest state appellate court to which an appeal is taken. See Tenn. Code Ann. § 40-30-102(a). This Court dismissed the Defendant's initial appeal from his motion to withdraw his guilty plea on July 17, 2002. If the motions to withdraw the guilty pleas, which were filed on September 22, 2003, and October 24, 2003, were treated as petitions for post-conviction relief, their consideration was barred by the statute of limitations. Id.

CONCLUSION

The notice of appeal in this case was filed January 12, 2006. This notice states that it is an appeal from a December 13, 2005 order denying a motion to set aside a guilty plea. In his brief, however, the Defendant acknowledges that the appeal is from the April 29, 2004 denial of post-conviction relief. It is apparent that the notice of appeal was not timely filed. For the reasons stated herein, this Court has determined that the interest of justice does not require that the timely filing of a notice of appeal be waived. Accordingly, this appeal is dismissed.

DAVID H. WELLES, JUDGE